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JURISDICTIONAL STATEMENT

Pursuant to Article V, Section 3 of the Missouri Constitution, the Missouri Supreme Court has original appellate jurisdiction over the issues presented in SC85846. Appellant Brown brought an action challenging whether Section 115.346, RSMo. can be applied to disqualify a candidate for office in a fourth class city for being in arrears in taxes or whether those provisions are an unconstitutional regulation of access to the ballot under the free and open elections clause, Missouri Constitution Article. I, §25, and the Due Process and Equal Protection clauses of the United State Constitution, Amendments V and XIV, and the Missouri Constitution, Article I, § 2. As such, SC85846 involves questions of the validity of Missouri statutes under the United States and Missouri Constitutions.

In SC85845, this Court also has jurisdiction pursuant to Article V, Section 4 of the Missouri Constitution, over the issues in the related mandamus action filed with the Court. Relator Shawn Brown filed his petition in mandamus with the Circuit Court of St. Charles County, but the petition was dismissed in the Circuit Court and no preliminary writ or alternate writ was issued. Following that dismissal, Relator filed his original writ in mandamus before this Court. Missouri Supreme Court Rule 84.22(b) states that if a judgment has been entered and an appeal of the judgment is pending, no original remedial writ shall be issued by an appellate court , unless the appeal is pending in that court. Jurisdiction of the mandamus action is thus with this Court pursuant to

Rule 84.22(b) because of the pendency of the related appeal and this Court's jurisdiction in appeal SC85846.

STATEMENT OF FACTS

Appellant Shawn C. Brown brought this action to have his name placed on the ballot for mayor of the City of St. Peters, Missouri. [Tr. 62-63] On December 16, 2003, the opening day for filing for city offices, Appellant Brown was the fifth person in the candidate line outside the City of St. Peters City Hall Clerk's Office but he was the first candidate for mayor in the line. [Tr. 63, 64] As the first person in line for the office of mayor, Shawn C. Brown's name would have appeared first on the ballot. [Tr. 64]

At 6:00 a.m., the City unlocked the doors and admitted the candidates then in line to enter and register. [Tr. 63, 64] Appellant Brown was provided a Notice of Intention to Run for Elective Office form for the office of mayor to fill out to register as a candidate for that office. [Tr. 64; L.F. 118]

Appellant Brown met the qualifications as stated on the form at the time of completing it. [L.F. 65-66, 92] Appellant testified he read the part of the form by which he swore that he held the necessary qualifications for office. [Tr. 92] Appellant Brown testified that on December 16, 2003 when he entered into his oath he was not in arrears on his taxes. [Tr. 92] Appellant Brown filled out the declaration of candidacy form and filed it with the Clerk's Office at 6:05 a.m. [Tr. 66-67; L.F. 118] Appellant Brown testified he was not provided a copy of his filing but that he was given a receipt for payment of the \$75 filing fee at that time. [Tr. 67] (Appellant Brown testified that he received a copy of his Notice of Intention to Run for Elective Office on January 26,

2004, when he went to the St. Peters City Clerk's Office and paid for a copy. [Tr. 67, 70])

Candidacy closed for the mayoral position on January 20, 2004 since that position would be on the April 6, 2004 municipal election in the City of St. Peters. Appellant Brown testified before the trial court that he first knew of a problem with his candidacy when he received a phone call at about 4:50 p.m. on January 20, 2004 from City of St. Peters City Clerk Rhonda Shaw. [Tr. 68] Appellant Brown then testified that Respondent Shaw then informed Appellant Brown that he was not eligible as a result of Section 115.346 RSMo. [Tr. 68]

County Collector Barbara Walker testified that the St. Peters City Clerk had checked with the County Collector's office about payment of taxes for only two or three candidates. [Tr. 104] One of the candidates asked Ms. Shaw inquired about was Shawn Brown and another was a candidate named Thomas B., or Thomas W. Brown, a candidate for alderman. [Not the incumbent Mayor] Ms. Walker could not remember the exact date, [Tr. 104, 105] but knew it was getting close to the time the cities would have to certify their candidates. [Tr. 104]

On cross examination of Collector Barbara Walker, counsel for Respondent Shaw produced Exhibit 6, which was admitted into evidence and was a Notice of Intention to Run for Elective Office of Thomas W. Brown. A time stamp on that document indicated 4:44 p.m. on January 20, 2004. [Tr. 106; L.F. 157] Counsel alleged to Collector Walker

that the document indicated that Respondent Shaw would have had to have called after 4:44 p.m. on January 20, 2004 to inquire concerning the payment of Thomas W. Brown's taxes. [Tr. 106] Appellant Shawn C. Brown indicated he was not aware his property taxes had not been paid until Respondent Rhonda Shaw called him on January 20, 2004 at 4:50 p.m.. [Tr. 68] At approximately 4:55 p.m., after hanging up with the Respondent Shaw, Appellant Brown called the County Collector's office and spoke with Tammy, a clerk employed by the County Collector's Office. Appellant Brown asked her whether the taxes had been paid, [Tr. 68, 70] and Tammy checked and indicated to him that the taxes had not been paid. [Tr. 68] Appellant Brown testified he did not check with County Collector Barbara Walker prior to January 20, 2004 because he assumed his tax payment was taken care of from his escrowed payments to the mortgage company. [Tr. 85] Appellant Brown testified he had not received a tax bill from the County for his real property taxes. [Tr. 74] He testified he did receive a tax bill for his personal property, and that he paid that shortly after the personal property tax bill was received in the mail. [Tr. 74]

Both Collector Walker and Appellant Brown indicated that on January 27, 2004, Appellant Brown paid his real estate tax at the County Collector's office. [Tr. 73-74, 88, 101; L.F. 122]

Collector Walker testified that her office generates a tax bill to taxpayers themselves that is yellow in color, is oversized and is sent out in October of the year.

[Tr. 100] That document was not reproducible, but the Collector did review that the tax receipt generated by her office to Appellant Brown at the time of his payment, which document the Collector testified did contain much of the same information as the yellow tax bill. Collector Walker testified that the tax bill would contain a place which indicated whether the Collector's system had recorded that a loan or mortgage company had requested a tax bill. [Tr. 99, 112]

Mortgage information is supplied to the Collector's office by the lenders themselves.. [Tr. 117] The Collector's office does not get its information concerning a mortgage from the taxpayer.. [Tr. 117]

Collector Walker did not know whether the Appellant Brown and his wife's tax bill had been requested by a loan company for the 2003 real estate taxes, only that the information for a loan was not on the statement printed out by her office when Appellant Brown paid his taxes on January 27, 2004 . [Tr. 99]

Records from the Collector's office for the 2002 taxes were that the tax bill had been addressed to Shawn Brown and Rhonda Brown at their home address. [Tr. 102] The bill was paid by check on December 31, 2002, but the Collector's records do not indicate by whom it was paid. [Tr. 102; L.F. 162] The Collector's Office had a code a clerk could fill in on the receipt that the tax bill was paid by someone other than the taxpayer. [Tr. 102] The Collector did not believe that there were any such notations in the receipt for the 2002 taxes, which would indicate that payment for the tax bill for

2002 came from the taxpayer. [Tr. 102-03] Mortgage companies also pay by check.
[Tr. 103]

The Collector testified that 150,000 to 160,000 tax bills are sent out. [Tr. 114]
The office relies on the Post Office to return those that are not delivered. [Tr. 114]. The
Collector's Office cannot verify who actually receives a tax bill except if someone sends
in a payment for a tax bill. [Tr. 114].

Exhibit 7 was admitted into evidence showing a follow-up fax sent from Ms.
Walker, County Collector to Ms. Shaw on January 21, 2004 12.54 p.m. [Tr. 103].

POINT RELIED ON

WHETHER THE TRIAL COURT ERRED IN HOLDING THAT SECTION 115.346 RSMO WAS CONSTITUTIONALLY VALID IS A MATTER OF IMPORTANCE TO COUNTY ELECTION AUTHORITIES THROUGHOUT THE STATE.

Preisler v. Calcaterra, 243 S.W.2d 62 (Mo. banc 1951)

State ex rel. Haller v. Arnold, 210 S.W. 374 (Mo. banc 1919)

MO. CONST. Art. I, § 25

§71.005,RSMo

§ 79.250, RSMo

§ 115.346, RSMo.

ARGUMENT

WHETHER THE TRIAL COURT ERRED IN HOLDING THAT SECTION 115.346 RSMO WAS CONSTITUTIONALLY VALID IS A MATTER OF IMPORTANCE TO COUNTY ELECTION AUTHORITIES THROUGHOUT THE STATE.

Standard of Review: The judgment of the trial court will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or unless it erroneously declares or applies the law. *Jackson County Board of Election Commissioners v. Paluka*, 13 S.W.3d 684, 688 (Mo. App.2000); *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976). Questions of law are reviewed *de novo* by the reviewing court.

A Petition for a Writ of Mandamus, as filed by Relator Brown, is an original action before this Court, with the Court deciding the case *de novo* as set forth in Rule 84.24(g) of the Missouri Rules of Civil Procedure. A writ of mandamus is the appropriate remedy to compel one governmental official to certify a person as a candidate and another to place that person's name on the ballot. *See, e.g., State ex rel. Dahl v. Lange*, 661 S.W.2d 7, 8 (Mo. banc 1983). It can be utilized to compel the undoing of a thing wrongfully and improperly done or to compel the doing of that which is right when wrongfully withheld. *State ex rel. Casey's v. City Council of Salem*, 699 S.W.2d 775, 776 (Mo. App. 1985). It will issue only when a relator has established the

clear and unequivocal right to relief sought in the Petition. *State ex rel. Casey's*, 699 S.W.2d at 776.

Respondent Chrismer's interest in this matter is not the advocacy of a candidate appearing on a ballot or not appearing on the ballot. As the Election Authority of St. Charles County, Respondent Chrismer has a duty to conduct elections throughout the County. In municipal elections, this entails accepting the certification of the candidates and ballot issues from municipal clerks, and then preparing the ballot. Respondent's interest in all elections is in a lawfully conducted, free and open election and in the dissemination of information concerning that election, its candidates and issues.

The confusion regarding Section 71.005 RSMo., and its meaning is one that the Election Authority urges the Court to clear up in that candidates are now be regularly removed pursuant to its provisions.

Section 71.005, states

No person shall be a candidate for municipal office unless such person complies with the provisions of section 115.346 RSMo., regarding payment of municipal taxes or user fees.

Section 115.346 was enacted by the General Assembly and signed into law by House Bill 676 in 1999. As a part of Sections 115.305 through 115.405 it only applied in municipal elections when cities of the fourth class elected, by ordinance, to hold primary elections in accordance with Sections 115.305 through 115.405, or in

accordance with the provisions of the applicable portions of Chapter 78. In that initial adoption of Section 115.346 the legislature adopted a provision which would affect only primary elections.

Section 115.346 state as follows:

Notwithstanding any other provisions of law to the contrary, no person shall be certified as a candidate for a municipal office, nor shall such person's name appear on the ballot as a candidate for such office, who shall be in arrears for any unpaid city taxes or municipal user fees on the last day to file a declaration of candidacy for the office.

Section 115.346 at passage applied only to primary elections, and Section 79.250 RSMo. applied to the tax status of the person seeking election or appointment. Section 79.250 RSMo. states, in pertinent part, . . . *No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, or forfeiture or defalcation in office. . . .*

However, in 2002 the Missouri General Assembly enacted S.B. 675, which included Section 71.005 requiring compliance with Section 115.346 to be a candidate for municipal office, including the office of mayor. In so singling out section 115.346 the legislature applied the following language to all municipal elections: “ *no person shall be certified as a candidate for a municipal office, nor shall such person's name appear on the ballot as a candidate for such office, who shall be in arrears for any*

unpaid city taxes or municipal user fees on the last day to file a declaration of candidacy for the office.” in addition to the language of Section 79.250 RSMo that already applied.

In that Section 115.121 sets municipal elections for the first Tuesday after the first Monday in April each year, and in that Section 115.127.5 sets the opening day for candidate filing as the 8:00 a.m. the fifteenth Tuesday prior to the election and closes candidacy at 5:00 p.m. the eleventh Tuesday prior to the election, the candidacy of municipal officers will always include December 31, 2004, and thus a candidate may register and be in compliance with 115.346 and fall out of compliance, knowingly or unknowingly, by the last day to file a declaration of candidacy.

Whether 115.346 is constitutional is a matter of general importance to the County Election Authorities in this State. In 1951 this Court stated that every eligible person has the right under the constitutional guaranty of free and open elections to become a candidate for office, *Preisler v. Calcaterra*, 362 Mo. 662, 243 S.W.2d 62, 64; (Mo. banc 1951) State ex rel. Haller v. Arnold, 277 Mo. 474, 210 S.W. 374, 376[3] (Mo. banc 1919); and that restricting that constitutional right in such a manner as to effectively deny or improperly impede it is a violation of the guaranty, *State ex rel. Preisler v. Woodward*, 340 Mo. 906, 105 S.W.2d 912, 914[4, 5] (Mo. banc 1937); State ex rel. Haller v. Arnold, supra, 210 S.W. 376[2].

Clearly, also, a municipality has a legitimate governmental interest in not only the payment of its taxes but also having municipal officers who are not out of compliance

with the laws they, by the nature of their election, are responsible to uphold. However, no Missouri case has ruled on Section 71.005 or Section 115.346. Federal courts are split on similar statutes. The United States Court of Appeals for the Sixth Circuit upheld a statute similar to Missouri's Section 115.346 in Corrigan v. City of Newaygo, 55 F.3d 1211 (6th Cir. 1995), in that same year the United States District Court for the Eastern District of Texas struck down a similar provision in the City of Longview's Charter. The District Court decision was affirmed by the Fifth Circuit Court of Appeals. Hunt v. City of Longview, 932 F. Supp. 828, 841 (E.D. Tx. 1995), affirmed by the Fifth Circuit in Hunt v. City of Longview, 95 F. 3d 49 (5th Cir. 1996).

Since this Court issued its opinions concerning access to the ballot as above set out, the United States Supreme Court has stated that as a matter of constitutional law, any state law regulating access to the ballot must be shown by the state to be necessary to serve a compelling interest. Illinois Elections Board v. Socialist Workers Party, 440 U.S. 173, 184-85 (1979). Also, when there is a compelling interest, the state must utilize the least restrictive means in achieving its ends. Id. at 185-86, 99 S.Ct. 983. In many instances courts apply strict scrutiny in determining whether a regulation involving right of access to the ballot is constitutional. State ex rel. Coker-Garcia v. Blunt, 849 S.W.2d 81 (Mo.App.1993).

Determining whether strict scrutiny applies may well determine if Section 115.346 is constitutional. The trial Court determined that strict scrutiny did not apply.

Pursuant to the position argued by the Attorney General and by the Counsel for Respondent Shaw, the Court utilized the balancing test used by the United States Supreme Court in Anderson v. Celebrezze, 460 U.S. 780 (1983). If strict scrutiny does not apply, then this Court is faced only with two legislative acts concerning the payment of taxes by candidates and the trial court's decision must be upheld under the standard of review. However, if this Court determines that a fundamental right exists under Article I Section 25 to access the ballot as a candidate, then the next step in the analysis is whether the addition of Section 71.005, and through it Section 115.346, to the candidacy process, when Section 79.250 already addressed a candidate's tax status infringes on this fundamental right. It is to these issues that the Election Authority seeks this Court's determination.

CONCLUSION

WHEREFORE, this matter is one of general importance to the Election Authorities of this State.

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